

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-267-1H
No. 5:12-CV-99-H

PHILLIP ANTHONY ISLES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**ORDER
VACATING JUDGMENT**

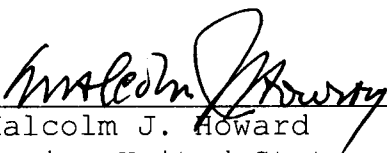
This matter is before the court on remand from the Fourth Circuit Court of Appeals for further proceedings in petitioner's 2255 motion in light of Mcquiggin v. Perkins, 133 S.Ct. 1924 (2013) and Miller v. United States, 735 F.3d 141 (2013).

The government has consented to petitioner's motion to the extent he seeks vacatur of Count One of the Indictment. Petitioner and the government have agreed that Counts Two and Three shall be reinstated pursuant to United States v. Maybeck, 23 F.3d 888, 894 (4th Cir. 1994) (appropriate remedy under § 2255 is to "return [] the parties as nearly as possible to their pre-plea agreement positions.") and 18 U.S.C. § 3296.

Therefore, petitioner's motion to vacate [DE #33] is granted, and this court's judgment of July 13, 2010, is hereby vacated. Pursuant to 18 U.S.C. § 3296, Counts Two and Three of the Indictment are hereby re-instated. Arraignment on Counts

Two and Three of the Indictment are hereby scheduled for this court's December 9, 2014 term. Defendant shall remain in custody pending the Arraignment.

This 13th day of November 2014.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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